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Elizabeta Ivičević Karas\*

## THE EPPO AND ITS COORDINATION WITH NATIONAL PROSECUTING AUTHORITIES: THE CROATIAN PERSPECTIVE\*\*

*This article addresses some theoretical and practical problems concerning coordination between the EPPO and national prosecuting authorities, seen from the Croatian perspective. Since investigations of the EPPO will be conducted according to national law, their efficiency will depend on the efficiency of national legal systems, but also on the efficiency of the EPPO's coordination with national authorities. There are two basic principles that regulate coordination between the EPPO and competent national prosecuting authorities: the principle of shared competence and the principle of sincere cooperation, meaning that the EPPO and national prosecuting authorities should work together and with the same goals, which implies mutual trust, loyalty and intense communication. Still, the EPPO exercises priority competence, which is reflected in its right of evocation. The analysis of some challenges to the system of shared competence and sincere cooperation, considered from the perspective of current Croatian criminal procedure legislation, shows that the complementarity principle may be a useful tool in regulating coordination between the EPPO and Croatian prosecuting authorities in specific situations where the EPPO must decide whether to use the right of evocation, although existing language barriers may reduce its practical utility.*

*Keywords: EPPO, national prosecuting authorities, state attorney, coordination, shared competence, sincere cooperation, complementarity principle, right of evocation*

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\* Elizabeta Ivičević Karas, DSc, Professor at the Department of Criminal Procedural Law, University of Zagreb, Faculty of Law.

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## 1. INTRODUCTION

The idea of the supranational European public prosecutor, who would be in charge of the investigation and prosecution of criminal offences against the financial interests of the European Union, was presented in the 1997 Corpus Juris. In the beginning only theoretical,<sup>1</sup> the idea was finally realised two decades later through the Regulation implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (EPPO)<sup>2</sup> (hereinafter: Regulation), adopted by the Council of the European Union in October 2017. More than two years after, the establishment of the EPPO is still the subject of numerous theoretical analyses and critical debates, where many organisational and procedural questions still remain open. This article has no pretensions to offer an overall and in-depth analysis of this new institute. Instead, it will address some theoretical and practical problems concerning coordination between the EPPO and national prosecuting authorities, seen from the Croatian perspective. The analysis will start with the efficiency of the EPPO and its investigations depending on national law and coordination with national authorities. After a brief overview of the principles regulating coordination between the EPPO and national authorities, the central part of the paper will be dedicated to specific challenges to the system of shared competence and sincere cooperation, regarded from the Croatian perspective, which concern: the coordination of the European Delegated Prosecutors with domestic law enforcement authorities, the prescribed deadlines for conducting the investigation and filing the indictment, the amount of damage to the EU financial interests, and the language barriers.

## 2. EFFICIENCY DEPENDING ON NATIONAL LAW AND COORDINATION WITH NATIONAL (PROSECUTING) AUTHORITIES

One of the main reasons justifying the establishment of a supranational, European prosecution service was to provide stronger protection of the financial interests of the European Union.<sup>3</sup> The goal of the Commission's original

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<sup>1</sup> See Lorena Bachmaier Winter, "The Potential Contribution of a European Public Prosecutor in Light of the Proposal for a Regulation of 17 July 2013" 2015 23(2) *Eur. J. Crime Crim. L. & Crim. Just.* 121, p 122.

<sup>2</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') [2017] OJ L 283/1.

<sup>3</sup> Susanne Rheinbay, *Die Errichtung einer Europäischen Staatsanwaltschaft* (Duncker & Humblot, 2014) p 80.

Proposal was to be achieved through a centralised and strong EPPO, which would act according to a complete supranational system of procedural rules. Yet, this initial idea was significantly changed and the final concept, which was adopted in the Regulation, came as a result of balancing between the need for a more effective system of protection of the EU's financial interests and the Member States' insistence on preserving their sovereignty in the field of criminal law.<sup>4</sup> This concept implies a combination of supranational and national rules of procedure. But even though the Regulation contains a number of specific rules of procedure on investigation, the investigation is actually conducted according to national law which must provide a list of investigative measures (according to Article 30 of the Regulation).<sup>5</sup> Therefore, the investigations of the EPPO, as well as its efficiency, will actually depend on the efficiency of national legal systems.<sup>6</sup> In other words, the EPPO will only be as efficient as the national system allows, since the possibilities for it to gather evidence in accordance with EU law and independently of national law and authorities will be limited.<sup>7</sup> This relativises one of the main objectives of the EPPO project as it was initially envisaged – efficiency in investigating and prosecuting criminal offences against the financial interests of the European Union.

Such a predominant role of national law poses challenges to relations between the EPPO and national authorities.<sup>8</sup> Much efficiency will depend not only on the conduct of domestic authorities, but also on the coordination and cooperation of the EPPO with national prosecuting authorities, as well as with other relevant actors, primarily national law enforcement authorities which in many legal orders have an important role in gathering evidence and supporting prosecution.

On the other hand, the EPPO has a complex structure. It is based on the “collegiate model”, where a College consists of one chief prosecutor and one prosecutor per participating member state, and is composed of a number of staff both at the central level<sup>9</sup> and decentralised level.<sup>10</sup> The complexity of the

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<sup>4</sup> Virginia Tzortzi, *The European Public Prosecutor's Office [EPPO] as the Keystone of the EU Criminal Justice System* (Sakkoulas Publications, 2018) p 6.

<sup>5</sup> See Bachmaier Winter (n 1) p 140.

<sup>6</sup> Ibid., p 141.

<sup>7</sup> See in more detail arguments against the wide use of national laws in Katalin Ligeti, Michele Simonato, “The European Public Prosecutor's Office: Towards a Truly European Prosecution Service” (2013) 4(1-2) *New J. Eur. Crim. L.*, p 19.

<sup>8</sup> Tzortzi (n 4) pp 41–42.

<sup>9</sup> Besides the College, the Central Office will include the Permanent Chambers, the European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors and the Administrative Director (Article 8(3) of the Regulation).

<sup>10</sup> The decentralised level consists of European Delegated Prosecutors located in the Member States (Article 8(4) of the Regulation).

EPPO collegiate structure itself may be regarded as a potential challenge to efficient proceedings,<sup>11</sup> including efficient coordination with national prosecuting authorities, but this issue will not be the focus of this analysis.

### 3. PRINCIPLES REGULATING COORDINATION BETWEEN THE EPPO AND NATIONAL AUTHORITIES

Two basic principles regulate coordination between the EPPO and national authorities: the principle of shared competence and the principle of sincere cooperation.<sup>12</sup> Both principles imply that the EPPO and national prosecuting authorities should work together with the same goal.

With regard to the material competence of the EPPO, as the Regulation stipulates, the EPPO will be in charge of the investigation and prosecution of criminal offences affecting the financial interests of the European Union according to Directive (EU) 2017/1371 (PIF offences) and determined by the Regulation, offences which are inextricably linked to them, and offences related to participation in a criminal organisation as defined in Framework Decision 2008/841/JHA if the organisation's focus is on committing criminal offences against the financial interests of the European Union, until the case has been finally disposed of.<sup>13</sup> Exercising its competence, the EPPO may either start the investigation, or use its right of evocation.<sup>14</sup> This means that, even though the relationship between the EPPO and the national prosecuting authorities is based on a "system of shared competence",<sup>15,16</sup> the EPPO still exercises priority competence,<sup>17</sup> which is reflected in its right of evocation.<sup>18</sup>

Another principle regulating the relationship between the EPPO and national prosecuting authorities is the principle of sincere cooperation.<sup>19</sup> All

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<sup>11</sup> See Vera Alexandrova, "Presentation of the Commission's Proposal on the Establishment of the European Public Prosecutor's Office" in L.H. Erkelens, A.W.H. Meij, M. Pawlik, *The European Public Prosecutor's Office An Extended Arm or a Two-Headed Dragon?* (Asser Press, 2015) pp 15–16.

<sup>12</sup> See Dražen Jelenić, "Europeizacija kaznenog progona – ured europskog javnog tužitelja u Republici Hrvatskoj" in Jakša Barbić (ed), *Europska budućnost hrvatskoga kaznenog pravo-suda* (Hrvatska akademija znanosti i umjetnosti, 2018) p 101.

<sup>13</sup> Article 4 and Article 22 of the Regulation.

<sup>14</sup> Tzortzi (n 4) p 39.

<sup>15</sup> Recital 13 of the Regulation.

<sup>16</sup> Tzortzi (n 4) p 39.

<sup>17</sup> Ibid.

<sup>18</sup> Article 27 of the Regulation.

<sup>19</sup> Article 5(6) of the Regulation: "The competent national authorities shall actively assist and support the investigations and prosecutions of the EPPO. Any action, policy or procedure under this Regulation shall be guided by the principle of sincere cooperation".

national authorities, competent under national law, have an obligation to report any criminal conduct that could fall within the material competence of the EPPO.<sup>20</sup> The duty to report criminal offences is mutual, meaning that the EPPO must also inform competent national authorities of any criminal offence falling outside its competence, and provide all available relevant evidence.<sup>21</sup> Therefore, the principle of sincere cooperation implies mutual support and information.<sup>22</sup> This means that the EPPO, especially European Delegated Prosecutors, and national authorities should work together, which requires mutual trust and the recognition of the EPPO as part of the domestic criminal justice system.<sup>23</sup> “Double hat” European Delegated Prosecutors will be integrated into national criminal justice systems<sup>24</sup> and will have a particular role in “the establishment of efficient bridges between national and European interests”,<sup>25</sup> especially at the operational level, since they will work with national law enforcement authorities.

Yet, the right of evocation reflects not only the priority in competence of the EPPO, when it comes to criminal offences placed under its material competence, but also a sort of hierarchical superiority with regard to national prosecuting authorities.<sup>26</sup> This might be interpreted as if there were a certain distrust of the Commission towards the Member States and their efforts to investigate and prosecute PIF offences, even though the general principle of sincere cooperation should underlie their relations. An additional problem is that there are no strict criteria specifying what principles should lead the EPPO when deciding to exercise its right of evocation.<sup>27</sup> The Regulation contains only several general provisions, such as the one determining that the EPPO may exercise that right only as long as the investigation has not yet been closed and “an indictment has not been submitted to a court”.<sup>28</sup> In addition, the Regulation provides the possibility for European Delegated Prosecutors to decide not to

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<sup>20</sup> Article 24(1) of the Regulation.

<sup>21</sup> Article 24(8) of the Regulation.

<sup>22</sup> Recital 14 of the Regulation.

<sup>23</sup> Jelenić (n 12) p 112.

<sup>24</sup> See Katalin Ligeti, Anne Weyembergh, “The European Public Prosecutor’s Office: Certain Constitutional Issues” in L.H. Erkelens, A.W.H. Meij, M. Pawlik, *The European Public Prosecutor’s Office: An Extended Arm or a Two-Headed Dragon?* (Asser Press, 2015) p 62.

<sup>25</sup> Coninx, Michèle, The European Commission’s Legislative Proposal: An Overview of Its Main Characteristics, in L.H. Erkelens, A.W.H. Meij, M. Pawlik, *The European Public Prosecutor’s Office: An Extended Arm or a Two-Headed Dragon?* (Asser Press, 2015) p 33.

<sup>26</sup> In Croatian law, the right of evocation is vested in the higher state attorney with regard to the lower state attorney and is an expression of the hierarchical structure of the State Attorney’s Office. See Davor Krapac, *Kazneno procesno pravo Prva knjiga: Institucije* (Narodne novine, 2015) pp 220–221.

<sup>27</sup> See Tzortzi (n 4) p 39.

<sup>28</sup> Article 27(7) of the Regulation.

evoke a particular case, regarding offences which have caused or are likely to cause damage to the European Union's financial interests of less than EUR 100,000.<sup>29</sup> In this regard, the College should issue general guidelines to establish clear criteria, taking specifically into account several elements<sup>30</sup> which would actually still leave plenty of room for discretion when deciding on whether or not to use the EPPO's right of evocation. On one hand, there are relatively objective criteria, such as the nature of the offence and the urgency of the situation. On the other hand, indicating "the commitment of the competent national authorities" as one of the criteria that should be taken into account, the Regulation introduces a subjective element into regulating the coordination issues. If not expressly, then implicitly, this may be interpreted as referring to the principle of complementarity.

As Satzger pointed out, the application of the complementarity principle, if adopted as a principle regulating coordination between the EPPO and national prosecuting authorities, would imply that national prosecuting authorities would be competent for investigating and prosecuting crimes against the European Union's financial interests, while the competence of the EPPO would depend on the unwillingness and inability of national prosecuting authorities to genuinely protect EU financial interests.<sup>31</sup> In other words, only if national prosecuting authorities were unwilling or unable genuinely to protect EU financial interests would the EPPO be competent to prosecute PIF offences.<sup>32</sup> With reference to the Rome Statute of the International Criminal Court, the application of the complementarity principle would provide a certain advantage for Member States, in the sense that as long as their authorities were prosecuting a person, the EPPO could not do so, unless the state was actually unable or unwilling to prosecute.<sup>33</sup> Even though this principle has not been adopted in the Regulation, Satzger points out that it could still be used as an important "restrictive guideline", especially in exercising the EPPO's right of evocation.<sup>34</sup> Moreover, the same author sees the principle of complementarity, or "the complementarity regime", as a useful tool in defining "the mode of cooperation between national prosecuting authorities and the EPPO".<sup>35</sup> Pawlik

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<sup>29</sup> Article 27(8) of the Regulation.

<sup>30</sup> Article 27(8) of the Regulation.

<sup>31</sup> Helmut Satzger, "The European Public Prosecutor's Office and Its Coordination with the National Public Prosecutor's Office: The Model of Complementarity" in L. Bachmaier Winter (ed), *The European Public Prosecutor's Office (Legal Studies in International, European and Comparative Criminal Law Book 1)* (Springer, 2018) p 48.

<sup>32</sup> Ibid.

<sup>33</sup> See Petar Novoselec, Igor Bojanić, *Opći dio kaznenog prava* (Sveučilište u Zagrebu, Pravni fakultet, 2013) p 518.

<sup>34</sup> Satzger (n 31) p 51.

<sup>35</sup> Ibid., p 48.

and Klip also indicated that, in order not to discourage national authorities from investigating criminal offences against the financial interests of the EU, instead of exclusive competence (initially proposed by the Commission), the EPPO should have complementary functions.<sup>36</sup> This would stimulate national authorities to investigate,<sup>37</sup> but also to sincerely cooperate with the EPPO.

The following brief analysis will point to some disputable issues regarding coordination between the EPPO and national prosecuting authorities, and indicate whether the use of the complementarity regime would respond to some questions raised by the system of shared competence and sincere cooperation, all considered from the Croatian perspective. Before the analysis, it should be noted, though, that at the time of writing this article there was still no draft legislation in Croatia implementing the Regulation, so it is impossible to refer to any existing or proposed legal solution that would be relevant for the discussion.

#### **4. CHALLENGES TO THE SYSTEM OF SHARED COMPETENCE AND SINCERE COOPERATION: THE CROATIAN PERSPECTIVE**

##### **4.1. Coordination of the European Delegated Prosecutors with domestic law enforcement authorities**

The European Delegated Prosecutors, besides specific powers conferred on them by the Regulation, will have the same powers as national prosecutors during all stages of criminal proceedings and will be able to exercise functions as national prosecutors.<sup>38</sup> This means that their position in the investigation and prosecution would be like that of Croatian state attorneys. At the same time, Croatian state attorneys, as national prosecuting authorities, but also other competent authorities, should “actively assist and support the investigations and prosecutions of the EPPO”, complying with the principle of sincere cooperation.<sup>39</sup> Therefore, there is, firstly, an obligation of sincere cooperation between the EPPO and national prosecuting authorities, but also, secondly, an obligation of sincere cooperation between the EPPO and other national authorities, especially the police who are not in charge of prosecution, but have the legal obligation to support and serve the prosecution, especially in the pre-trial stage.

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<sup>36</sup> Marta Pawlik, André Klip, “A Disappointing First Draft for a European Public Prosecutor’s Office” in L.H. Erkelens, A.W.H. Meij, M. Pawlik, *The European Public Prosecutor’s Office: An Extended Arm or a Two-Headed Dragon?* (Asser Press, 2015) p 192.

<sup>37</sup> Ibid.

<sup>38</sup> Article 13(1)(3) of the Regulation.

<sup>39</sup> Article 5(6) of the Regulation.



In Croatia, the state attorney, as a public prosecuting authority, is in charge of conducting inquiries, and then the investigation of criminal offences. Inquiries are the first phase of pre-trial proceedings and serve to collect information, as well as evidence on reasonable suspicion that justify the opening of investigation. During inquiries, all state bodies, ministries, organisations, banks and other legal persons have to cooperate with the state attorney at its request, mostly in a manner of providing relevant information.<sup>40</sup> Even if the Croatian Criminal Procedure Act (CPA) provides sanctions against those who fail to obey the state attorney's request, which may be imposed by the judge of investigation, the success of the inquiries may greatly depend on the ability and willingness of those organs and legal persons to sincerely cooperate.

Concurrently, the police, as the law enforcement authority, have a particularly important role in inquiries. On one hand, the state attorney is authorised to delegate inquiries to the police, but on the other, the police are also authorised to conduct inquiries *ex officio* if there are grounds for suspicion that a criminal offence has been committed. Police inquiries include conducting particular evidentiary actions in cases of urgency, as well as conducting evidentiary actions if the perpetrator is unknown, and those actions provide evidence for criminal proceedings. Whether or not there is any investigation often depends on the results of the inquiries. The state attorney has the duty to supervise the actions of the police in conducting inquiries, as well as in conducting evidentiary actions, but the police are not institutionally subordinated to the State Attorney's Office.<sup>41</sup> This means that the efficiency of the inquiries, and then the efficiency of the investigation as well, will to a great extent depend on the efficiency of the police actions.

Therefore, when conducting investigation, the EPPO, just like the domestic prosecuting authorities, will have to rely on police work, and much of the EPPO's efficiency will depend on the efficiency of police actions. In this sense, the police should comply with the principle of loyal cooperation and provide the same active support to the EPPO as it does to national prosecuting authorities,<sup>42</sup> from the moment of reporting the criminal offence to the EPPO until the EPPO decides to close the case or to prosecute.<sup>43</sup> This should be taken into account with regard to the right of evocation, when the EPPO would be esti-

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<sup>40</sup> Article 206(g)(2) and 206(i)(4) of the Criminal Procedure Act (CPA), Official Gazette, 152/08, 76/09, 80/11, 121/11 – consolidated text, 91/12 – Decision of the Constitutional Court of the Republic of Croatia, 143/12, 56/13, 145/13, 152/14, 70/17.

<sup>41</sup> See Maja Munivrana Vajda, Elizabeta Ivičević Karas, *International Encyclopaedia for Criminal Law: Croatia* (Wolters Kluwer, 2016) pp 143–144.

<sup>42</sup> Jelenić (n 12) p 112.

<sup>43</sup> Tamara Laptoš, "Uloga i položaj europskog javnog tužitelja u hrvatskom prethodnom postupku" (2019) 4 *Policija i sigurnost* p 503.



mating “the commitment of the competent national authorities”. If the EPPO takes over the investigation and prosecution from national prosecuting authorities, its investigative tools will to a great extent depend on the investigative work the domestic police have done up to then, or will do by order and under the supervision of the EPPO, while the quality of that work should not depend on whether it is the EPPO or the domestic prosecutor that has conducted the investigation in the concrete case.

#### **4.2. Deadlines for conducting the investigation and filing the indictment**

From the perspective of efficient cooperation and coordination between the EPPO and national prosecuting authorities, it should be pointed out that the Croatian Criminal Procedure Act prescribes rather strict deadlines for conducting the investigation and filing the indictment. These deadlines serve to provide for an efficient investigation. As the Constitutional Court of the Republic of Croatia indicated in a decision of July 2012, legal deadlines for conducting the investigation “ensure the legal predictability of the duration of the pre-trial proceedings and thus contribute to legal certainty”.<sup>44</sup> In addition, the deadlines for conducting the investigation are considered to be a tool to ensure procedural discipline on the part of the prosecuting authorities, even if they are not preclusive, but only instructive. It should, though, be pointed out that for criminal offences for which a punishment of less than five years of imprisonment is prescribed by law, the state attorney shall conduct only preliminary inquiries, which are less formal than an investigation for which there are no strict deadlines.<sup>45</sup>

The initial deadline for concluding the investigation is six months from the day the ruling on the investigation became final.<sup>46</sup> This deadline is not the final one, and the CPA provides the possibility of prolongation for another six months if there is a justified need for prolongation, and then another six months if the State Attorney General allows it. The prolongation mechanism includes the hierarchical line of reporting and, in some case, deciding on possible pro-

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<sup>44</sup> Constitutional Court of the Republic of Croatia, U-I-448/2009, U-I-602/2009, U-I-1710/2009, U-I-18153/2009, U-I-5813/2010, U-I-2871/2011, Zagreb, 19 July 2012, point 189.

<sup>45</sup> The absence of deadlines during preliminary inquiries has been criticised in literature from the perspective of the above-mentioned decision of the Constitutional Court. See Zlata Đurđević, “Pravo na učinkovitu istragu u kaznenim predmetima: analiza hrvatske prakse i prava” in Davor Krapac (ed), *Profili hrvatskog kaznenog zakonodavstva, Hrvatska akademija znanosti i umjetnosti* (Hrvatska akademija znanosti i umjetnosti, 2014) pp 131-132.

<sup>46</sup> Article 229(1) CPA.

longation. Such a control mechanism is typical of organisations based on the principle of monocracy<sup>47</sup> and hierarchy, and the State Attorney's Office in Croatia is structured according to those principles. Such an organisation ensures the implementation of a uniform prosecution policy, knowing that in Croatia the state attorney's decision not to prosecute in a particular case may not be challenged with legal remedies and is not subject to judicial review.<sup>48</sup> Furthermore, the Croatian CPA provides a whole range of legal remedies for victims, injured parties and defendants during the entire pre-trial proceedings, which may be filed with the state attorney in charge of the specific case, or with a superior state attorney.<sup>49</sup>

Besides this control provided within the State Attorney's Office, the Croatian Criminal Procedure Act also provides judicial control over the duration of the pre-trial proceedings. After all additional deadlines for conducting the investigation have expired, the defendant has the right to complain to the judge of investigation, for the procrastination of proceedings, and then the judge may order the state attorney to finish the investigation within a specified period.<sup>50</sup> A similar possibility is provided if there is no investigation, but if the state attorney has not decided on the crime report within six months of the entry of the crime report in the register.<sup>51</sup> The described mechanisms put in concrete form the principle of judicial control of criminal prosecution and provide effective judicial protection from arbitrary criminal prosecution and investigation.<sup>52</sup>

While the same mechanism of judicial control will apply with regard to the EPPO, it is still unclear how the mechanisms of hierarchical control, which exists within the State Attorney's Office, should function if the EPPO conducts or takes over the investigation and/or prosecution from national prosecuting authorities. The period of five days, within which the EPPO must decide on the exercise of its right of evocation, is relatively short. Still, when deciding on the opportunity of evoking the case, or reconsidering its decision not to use the right of evocation,<sup>53</sup> the EPPO should stay in the framework of

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<sup>47</sup> In this context, the principle of monocracy implies that one person manages and is responsible for the work of a certain (municipal, county, the entire state) state attorney's office – municipal state attorney, county state attorney, state attorney general.

<sup>48</sup> Krapac (n 26) p 220.

<sup>49</sup> See Đurđević (n 45) pp 134–135. See also Ante Novokmet, "Sudska kontrola kaznenog progona prema Noveli Zakona o kaznenom postupku" (2013) 2 *Hrvatski ljetopis za kazneno pravo i praksu* pp 603 – 605.

<sup>50</sup> Article 229(5) CPA.

<sup>51</sup> Article 213(b) CPA.

<sup>52</sup> See Zlata Đurđević, "Rekonstrukcija, judicijalizacija, konstitucionalizacija, europeizacija hrvatskog kaznenog postupka V. novelom ZKP/2008: prvi dio?" (2013) 2 *Hrvatski ljetopis za kazneno pravo i praksu*, p 328.

<sup>53</sup> Article 27(7) of the Regulation.

legislative deadlines for conducting the investigation, even if those deadlines are not preclusive.

On the other hand, once the investigation is closed, pursuant to the Croatian Criminal Procedure Act, there are preclusive and relatively short deadlines for filing the indictment. The initial one-month deadline may be prolonged for an additional two months, for justified reasons, but once all the deadlines run out, it is presumed that the state attorney has desisted from prosecution, and this presumption is irrefutable.<sup>54</sup> Only in the case of *vis major* or due to other unprovoked circumstances may the state attorney claim the reopening of proceedings.<sup>55</sup> Similarly, as with regard to the investigation, the mechanism of prolongation of the deadlines includes control and a decision by the superior state attorney. These deadlines are relatively short and they limit the margins of the EPPO's discretion to evoke the right to prosecution in a particular case. But, since all the described legislative deadlines serve to ensure procedural discipline and efficiency, noncompliance with the deadlines could be seen as a sign of unwillingness or inability of domestic authority to efficiently investigate and prosecute in a certain case. In these terms, breaking the deadlines could influence the EPPO's decision to use the right of evocation.

#### **4.3. The amount of damage to the EU financial interests**

Further doubts may arise with regard to the amount of damage to the European Union financial interests as the key element for deciding whether or not to refer the case to domestic authorities. As was already pointed out (*supra* Part 3), according to the Regulation, taking into account the degree of the seriousness of the offence or the complexity of the concrete proceedings, if the damage to the financial interests of the European Union is less than EUR 100,000, it would be possible for the Permanent Chambers to refer a case to the competent national authorities, according to the general guidelines issued by the College.<sup>56</sup> Under the same conditions, if the College considers that there is no need to investigate or to prosecute at Union level, it shall issue general guidelines allowing the

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<sup>54</sup> Article 230 CPA. In this regard, Bonačić suggests that it might be reasonable to prolong this initial one-month deadline in cases where the EPPO prosecutes, having in mind that the European Delegated Prosecutors must first submit a draft decision, proposing to bring a case to judgment, to the Permanent Chamber, which shall then decide on this draft within 21 days. This does not leave much time for the European Delegated Prosecutor to prepare the indictment. Marin Bonačić, "Ured europskog javnog tužitelja i hrvatsko kazneno pravosuđe: implementacijski zahtjevi i moguća rješenja" (2019) 2 *Hrvatski ljetopis za kaznene znanosti i praksu*, p 663.

<sup>55</sup> Article 500(2) CPA.

<sup>56</sup> Article 34(3) of the Regulation.

European Delegated Prosecutors to decide not to evoke the case.<sup>57</sup> Thereby, the commitment of the competent national authorities to recover the damage to the Union's financial interests will be taken into account.

The possibility for the EPPO to refer cases to domestic investigating and prosecuting authorities is primarily defined by the scope of damage to the European Union financial interests, which is set at EUR 100,000. The problem is that during the investigation, the amount of damage the defendant is charged with may change, so that it may be reduced to an amount less than EUR 100,000, or at a certain point the damage may exceed that amount. This may occur due to new facts and evidence, but also depending on whether the injured party filed a request for indemnification which has priority before requests for confiscation of pecuniary gain. If the damage subsequently exceeds the stated amount, particularly having in mind the strict deadlines for conducting investigation and for filing the indictment, the complementarity regime would be a useful tool for coordination between the EPPO and the domestic authorities, in such a way that the EPPO would exercise the right of evocation only if the domestic authorities were not devoted to the full recovery of the damage to the EU financial interests.

#### **4.4. The language barrier**

Besides all the disputable issues that have been indicated so far, there is also the problem of language. As has been pointed out, the EPPO and national authorities should actually work together, which requires, besides mutual trust, mutual and intense communication, which should also take place through "institutionalized communication channels".<sup>58</sup> This will require dealing with practical problems imposed by the language barriers. When deciding on whether or not to use the EPPO's right of evocation, and thereby taking into account "the commitment of the competent national authorities", it is difficult to imagine how this would be done other than by studying the case file, or at least parts of the case file, which would be in Croatian. In order for the mechanism of exercising the right of evocation within the EPPO's complex structure to work out, since it involves not only European Delegated Prosecutors, but also the Central Office, it would be necessary to translate parts or even the entire case file into English, which would be particularly burdensome. Therefore, the problem of the language barrier will not only affect the effectiveness of coordination between the EPPO and national prosecuting authorities, but also reduce the practical usefulness of the complementarity regime when it comes to practising the EPPO's right of evocation.

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<sup>57</sup> Article 27(8) of the Regulation.

<sup>58</sup> Jelenić (n 12) p 103.

## 5. CONCLUSION

This brief analysis has focused on several issues that may influence the functionality and efficiency of coordination between the EPPO and national prosecuting authorities, as well as other national authorities supporting investigation and prosecution, seen from the Croatian perspective. It is clear that the Croatian legal system will have to adjust to the new subject of criminal proceedings and that the process of adjustment will be challenging. No less challenging will it be for the new prosecuting authority to adjust to some specific features of Croatian criminal procedure and it still remains to be seen how this would be done, since, at the time of writing this article, there is still no draft legislation implementing the Regulation.

However, having in mind principles of shared competence and sincere cooperation, upon which coordination between the EPPO and the domestic authorities should be based, it is crucial that all subjects of criminal proceedings accept that the EPPO and domestic prosecuting authorities, as well as other authorities, will have to work together and with the same goals, which implies mutual trust, loyalty and intense communication. The brief analysis has shown that the complementarity regime can indeed be a useful tool in regulating coordination between the EPPO and domestic prosecuting authorities, especially in some situations where the EPPO must decide whether to use the right of evocation, when it is assessed that domestic authorities are not fully devoted to sincere cooperation and the efficient investigation and prosecution of criminal offences affecting the EU financial interests. Yet, the existing language barriers will not only affect the effectiveness of coordination between the EPPO and national prosecuting authorities, but also reduce the practical usefulness of the complementarity regime when it comes to practising the EPPO's right of evocation, since taking into account "the commitment of the competent national authorities" would actually require translating the entire case file, or at least significant parts of it, into English.

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## Sažetak

### URED EJT-a I NJEGOVA KOORDINACIJA S NACIONALNIM TIJELIMA KAZNENOG PROGONA: HRVATSKA PERSPEKTIVA

U članku se razmatraju određeni teorijski i praktični problemi vezani uz koordinaciju između Ureda EJT-a i nacionalnih tijela kaznenog progona promatrani iz hrvatske perspektive. Budući da će se istrage Ureda EJT-a provoditi prema nacionalnom pravu, njihova učinkovitost ovisit će o učinkovitosti nacionalnih pravnih sustava, ali i o učinkovitosti koordinacije Ureda EJT-a s nacionalnim vlastima. Dva osnovna načela reguliraju koordinaciju između Ureda EJT-a i nadležnih nacionalnih tijela kaznenog progona: načelo podijeljene nadležnosti i načelo lojalne suradnje, koja zahtijevaju da Ured EJT-a i nacionalna tužiteljstva rade zajedno i s istim ciljevima, što podrazumijeva međusobno povjerenje, lojalnost i intenzivnu komunikaciju. Ipak, u odnosu na nacionalna tijela kaznenog progona, Ured EJT-a ima prvenstvenu nadležnost, koja se odražava kroz njegovo pravo evokacije. U članku se ističe nekoliko problema koje je moguće očekivati u koordinaciji Ureda EJT-a i državnog odvjetništva kao nacionalnog tijela kaznenog progona u kontekstu prava evokacije Ureda EJT-a te se traži odgovor na pitanje bi li primjena načela komplementarnosti pomogla u njihovu rješavanju. Analiza je najprije obuhvatila problematiku koordinacije delegiranih europskih tužitelja s domaćom policijom, potom problematiku koordinacije Ureda EJT-a i državnog odvjetništva s obzirom na propisane rokove za provođenje istrage i podizanje optužnice te problematiku vezanu uz utvrđivanje iznosa štete financijskim interesima Europske unije, koji je ključni element u odlučivanju o tom hoće li Ured EJT-a koristiti svoje pravo evokacije, odnosno određeni predmet uputiti hrvatskom državnom odvjetništvu kao nadležnom nacionalnom tijelu, ili to neće učiniti. Provedena analiza pokazuje da načelo komplementarnosti može biti koristan alat u reguliranju koordinacije između EPPO-a i hrvatskog državnog odvjetništva kada Ured EJT-a mora odlučiti hoće li koristiti svoje pravo evokacije, premda bi postojeće jezične prepreke mogle umanjiti njegovu praktičnu korisnost.

Ključne riječi: Ured EJT-a, nacionalna tijela kaznenog progona, državno odvjetništvo, koordinacija, podijeljena nadležnost, lojalna suradnja, načelo komplementarnosti, pravo evokacije